UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF ROELOF BOTHA
MENLO PARK, CALIFORNIA
WEDNESDAY, AUGUST 5, 2009

JOB NO. 17298

AUGUST 5, 2009

9:04 a.m.

VIDEOTAPED DEPOSITION OF ROELOF BOTHA, SHEARMAN & STERLING LLP, 1080 Marsh Road, Menlo Park, California, pursuant to notice, and before me, ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR License No. 9830.

A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

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A P P E A R A N C E S (Continued.)

FOR THE WITNESS ROELOF BOTHA:

DURIE TANGRI PAGE LEMLEY ROBERTS & KENT LLP
By: RAGESH K. TANGRI, Esq.
332 Pine Street, Suite 200
San Francisco, California 94104
(415) 362-6666 rtangri@durietangri.com

ALSO PRESENT: Lou Meadows, Videographer.

---oOo---

R. BOTHA

MENLO PARK, CALIFORNIA

AUGUST 5, 2009

9:04 a.m.

09:05:41

09:05:41 THE VIDEOGRAPHER: On the record.

09:05:44 This is today's videotaped deposition of

09:05:47 Roelof Botha, taken on August 5th, 2009, at Shearman &

09:05:54 Stearling, 1080 Marsh Road, Menlo Park, California.

09:05:59 In the matter of Viacom International vs. YouTube,

09:05:59 Inc., and The Football Association Premier League

09:06:07 Limited, et al., vs. YouTube, Inc., et al.

09:06:07 Case No. 07-CV-2103 and 07-CV-3582. In the

09:06:16 United States District Court in the Southern District

09:06:18 of New York.

09:06:19 My name is Lou Meadows, and I represent David

09:06:23 Feldman Worldwide, located at 600 Anton Boulevard,

09:06:29 Suite 1100, in Costa Mesa, California.

09:06:31 We are now commencing at 9:04 a.m.

09:06:34 Will all present please identify yourselves

09:06:35 and state whom you represent for the record.

09:06:35 MS. CUNHA: Kirsten Cunha from Shearman &

09:06:40 Stearling on behalf of the Viacom plaintiffs.

09:06:41 MR. GALDSTON: Benjamin Galdston of Berstein,

09:06:41 Litowitz, Berger & Grossmann on behalf of the class
09:06:45 plaintiffs.
09:06:45 MR. KRAMER: I'm Dave Kramer from Wilson
09:06:49 Sonsini representing the defendants Google and
09:06:53 YouTube.
09:06:53 MR. TANGRI: Ragesh Tangri representing the
09:06:55 witness.
09:06:55 THE VIDEOGRAPHER: Thank you.
09:06:55 If there are no stipulations, the court
09:07:07 reporter may now administer the oath.

ROELOF BOTHA,
having been sworn as a witness,
testified as follows:

09:07:08 EXAMINATION BY MS. CUNHA
09:07:08 MS. CUNHA: Q. Good morning, Mr. Botha.
09:07:10 A Good morning.
09:07:11 Q Could you please state briefly your
09:07:13 educational background?
09:07:13 A Sure.
09:07:14 I completed an undergraduate degree at the
09:07:18 University of Cape Town and -- with majors in

09:08:20 please.

09:08:21 MR. TANGRI: Why don't we talk about this

09:08:22 off-line later. There are reasons he may not want to.

09:08:26 In any event, you can contact him through us, so...

09:08:28 MS. CUNHA: Q. Are you uncomfortable

09:08:30 providing your address on the record, Mr. Botha?

09:08:34 A I am.

09:08:34 Q How long have you lived at your current

09:08:36 address in Menlo Park?

09:08:37 A Three years.

09:08:40 Q What's your current work address?

09:08:42 A 3000 Sandhill Road.

09:08:46 Q What town?

09:08:47 A Menlo Park.

09:08:53 Q And are those the offices of some company or

09:08:56 firm?

09:08:56 A They are.

09:08:57 Q And what firm is that?

09:08:58 A They are a collection of different firms that

09:09:00 are located at this address, including the firm for

09:09:03 which I work, Sequoia Capital.

09:09:06 Q And how long have you worked for Sequoia

09:09:09 Capital?

09:09:10 A Since January 2003.

09:09:12 Q And what is your current -- what is your current title at Sequoia Capital?

09:09:16 A Partner.

09:09:17 Q And how long have you been a partner at Sequoia Capital?

09:09:20 A I don't know the precise date at which I became a partner. I think it was approximately the end of 2006, beginning of 2007.

09:09:30 Q Prior to becoming a partner, what was your title at Sequoia Capital?

09:09:41 A The term of my title was associate.

09:09:43 Q And other than associate and partner, have you held any other titles at Sequoia Capital?

09:09:48 A No.

09:09:48 Q Prior to joining Sequoia Capital, can you give me a brief summary of your work history?

09:09:57 A Reverse chronologically?

09:09:59 Q Sure.

09:09:59 A After graduating from Stanford, I joined a company called PayPal. I joined as a director of corporate development. Became vice president of finance and risk management. Became chief financial officer of the company in September 2001, and stayed at PayPal through the acquisition by eBay at the end

10:05:06 2005, I was not aware of informal communication
10:05:09 between content owners and YouTube about unauthorized
10:05:13 use of copyright material on the service.
10:05:27 MS. CUNHA: Q. At the time of the meeting
10:05:28 with Ms. Kirkman, were you a member of the YouTube
10:05:33 board at that time, if you recall?
10:05:38 A Unfortunately, the -- all we have, in
10:05:42 Exhibit 2, is the scheduling of a meeting on Monday --
10:05:47 to be scheduled for Monday, October 3rd, 2005. I
10:05:54 don't recall whether the meeting actually took place
10:05:55 on that specific date, and I don't recall whether the
10:05:57 financing had actually technically closed as of that
10:06:00 date, so I cannot answer that truthfully, because I
10:06:04 just don't recall.
10:06:09 Q Ultimately, Sequoia did invest in YouTube;
10:06:12 correct?
10:06:14 A Yes, in the fourth quarter of 2005, Sequoia
10:06:18 did invest in YouTube.
10:06:19 Q And that was in the Series A financing?
10:06:22 A Yes, that was a Series A financing.
10:06:24 Q And how much did Sequoia invest?
10:06:28 A I don't recall --
10:06:30 MR. TANGRI: Objection; vague.
10:06:31 You can answer.

10:06:32 THE WITNESS: Okay.

10:06:33 I don't recall the specific aggregate financing. I think it was in the order of $3.5 million.

10:06:40 MS. CUNHA: Q. And that was from the Sequoia fund 11 and whatever other side-by-side funds that were invested with fund 11; is that fair to say?

10:06:51 A That's correct --

10:06:52 MR. TANGRI: Objection.

10:06:52 Go ahead.

10:06:53 THE WITNESS: You're correct. The Series A financing took place from the Sequoia 11 main fund and associated side funds.

10:07:00 MS. CUNHA: Q. Did you have any personal -- strike that.

10:07:04 Did you make any personal investment in the Series A financing?

10:07:07 A The way that our funds are structured at Sequoia Capital, we have a partner fund that is a side-by-side fund with every fund that we raise, and as a matter of course, all partners are expected to invest in every partner fund alongside every main fund. So in that sense, whatever capital contribution I made to the Sequoia 11 partner side fund, it would

11:09:37 MR. TANGRI: Objection; ambiguous.

11:09:38 THE WITNESS: Could you define what you mean

11:09:40 "working closely," too.

11:09:42 MS. CUNHA: Sure.

11:09:43 Q Would you --

11:09:43 THE WITNESS: That's too vague.

11:09:44 MS. CUNHA: Q. Would you go to their --

11:09:45 would you go to their offices on a regular basis?

11:09:47 A I would stop by the incubation space several

11:09:50 times a week.

11:09:53 Q Was the -- after they moved to the San Mateo

11:09:57 office, did you continue to stop by their offices on a

11:10:00 weekly basis?

11:10:01 A After they moved to San Mateo, I don't know

11:10:06 whether it was necessarily every single week, but I

11:10:10 frequently paid visits to the company, and/or Chad

11:10:14 Hurley stopped by Sequoia's office.

11:10:16 Q You became a member of the YouTube board; is

11:10:19 that correct?

11:10:24 A Correct. After the Series A financing

11:10:27 closed, I became a member of the board.

11:10:29 Q And is it fair to say that you were an active

11:10:33 board member?

11:10:34 MR. TANGRI: Objection; ambiguous.

R. BOTHA

A F T E R N O O N S E S S I O N

1:04 P.M.

13:05:45

13:05:45 THE VIDEOGRAPHER: On the record.

13:06:02 The time is 1:04 p.m.

13:06:05 Please continue.

13:06:06 MS. CUNHA: Q. Did Sequoia ultimately invest in more rounds -- strike that.

13:06:13 Did Sequoia ultimately invest in more than one round of financing in YouTube?

13:06:17 A Sequoia Capital also invested in YouTube's Series B financing in 2006.

13:06:25 Q And do you recall the amount of the Series B investment that Sequoia made in YouTube?

13:06:33 A Let me think for a second.

13:06:35 Q And by "Sequoia," I mean --

13:06:37 A Sequoia Capital --

13:06:38 Q -- the fund and the side-by-side.

13:06:43 A Let me think for a second.

13:06:44 I think Sequoia Capital invested 5- to $6 million in the Series B financing. I don't recall the precise number.

13:07:08 MS. CUNHA: Let's mark this as the next